IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 482 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHABBIR VAHID DHOBI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 482 of 1999
MR DEEPAK M SHAH for appellants
THROUGH JAIL for appellants
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 12/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal, filed under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against judgment dated April 29, 1999, rendered by the learned Additional Sessions Judge, Camp : Anand, in Sessions Case No.29 of 1997, by which the appellants are convicted of the offences punishable under Section 392 read with Section 114 and Section 307 of the Indian Penal Code as well as Section 25(1C) of the Arms Act, 1959, and each is sentenced to R.I. for 10 years and fine of Rs.500/-, in default, S.I. for 3 months, for having committed offences punishable under Section 392 read with Section 114 of the Indian Penal Code as well as R.I. for 7 years and fine of Rs.250/-, in default, S.I. for one month, for having committed offence punishable under Section 307 of the Indian Penal Code, and R.I.for one year and fine of Rs.250/-, in default, S.I. for one month, for having committed offence punishable under Section 25(1C) of the Arms Act, 1959.

2. On October 13, 1996 at 7.30 P.M. a Semi-Luxury Bus bearing Registration No.GJ-18-V-990 belonging to State Transport Corporation was scheduled to start from Godhra S.T.Bus Stand to Ahmedabad. Mr.Subodhkumar Satyendrakumar, who was then discharging duties as an Inspector in Railway Protection Force, Dahod, was also travelling in the bus along with other passengers. The bus was over-crowded and, therefore, Police Inspector Mr.Subodhkumar had occupied the seat meant for conductor of the bus. When the bus reached near the field of Bhikhumiya Ibrahimmiya Shaikh of village Angadi on Thasara - Sevalia Road, two persons travelling in the rear part of the bus had got up. Each of them had Tamancha in his hand. One of the two persons had come-forward and asked passengers travelling in the bus not to move and take out valuables from them to be handed over to the two persons. One of the two persons had come near P.I. Mr.Subodhkumar, who was occupying the seat of conductor and had pointed Tamancha at him; whereas another had gone near the driver and asked him at the point of tamancha to move the bus to the side of road and stop it. The driver had no option because the person, who had asked him to move the bus to the side of road. Accordingly, the bus was moved to the side of road and stopped. The person, who was standing near P.I.Mr.Subodhkumar, had given a bag to the person who had asked the driver to stop the bus and asked the passengers to place valuables belonging to them in the bag. The

person, who was given the bag, had first come to P.I. Mr.Subodhkumar who had removed his wrist watch and placed the same in the bag. The person having the bag robbed the driver by asking the driver to place his wrist watch and money belonging to him in the bag. Thereafter the person having bag had moved from seat to seat and robbed passengers by asking them to place their valuables in the bag. It may be stated that the semi-luxury bus had only one door in front portion of the bus near the seat of conductor; whereas seat meant for passengers was on the rear of seat of the conductor. The person, who was robbing the passengers of their properties by asking them to place their valuables in the bag, had come near the person who was standing near the seat occupied by P.I.Mr.Subodhkumar and shown the bag containing articles robbed from the passengers. The person standing near the seat of conductor had on seeing the bag told that very few articles were placed by the passengers in the bag and that his target was to collect at least Rs.5 Lac, otherwise every passenger would be made to alight from the bus and searched. So saying, he had alighted from the bus; whereas the person with the bag had started second round to rob the passengers. The person, who had got down, was threatening the passengers and asking them to place their valuable in the bag from window of the bus. Meanwhile, P.I.Mr.Subodhkumar had closed the door of the bus from inside. Therefore, one who was standing outside the bus had accosted the one who was in the bus to fire and kill the passengers. Accordingly, the person who was in the bus and was robbing the passengers had fired a shot from his Tamancha, but no one was injured. During this time, P.I. Mr.Subodhkumar had loaded his service revolver and had fired shots at the person who was standing near the bus and injured him and asked the driver to drive the bus immediately. He had given solace to the passengers by introducing himself and asked them not to be panicky. He had further asked the passengers to apprehend the person who was in the bus. Accordingly, the person who was in the bus was apprehended by the passengers and was brought before P.I. Mr.Subodhkumar, who had removed Tamancha from his hand. Meanwhile, when the bus was about to reach Dakor, a mobile-police-van was spotted. The mobile-police-van was got stopped and the police personnel travelling in the mobile-police-van were informed about the incident. The person, who was apprehended from the bus, was handed over to police personnel travelling in mobile-police-van along with Tamancha which was used by him. The police personnel had informed P.I. Mr.Subodhkumar and others that the incident had taken place within the jurisdiction of Thasara Police Station and, therefore, they should go to

Thasara Police Station. Accordingly, the bus was taken to Thasara Police Station. At Thasara Police Station, the person apprehended was interrogated. On interrogation, the person who was apprehended from the bus had disclosed his name to be Shabbir i.e. appellant No.1 in the appeal and also informed that name of his accomplice was Sabbir @ Salim Babu Nizamuddin i.e. the appellant No.2. Meanwhile, some of the police personnel of Thasara Police Station had gone in a Jeep to the place of incident where-from another accused was found lying there, as he had sustained bullet injuries because of shots fired by P.I.Mr.Subodhkumar at him. The said person was also brought to Thasara Police Station where he was identified by P.I.Mr.Subodhkumar as the same person who was travelling in bus along with appellant No.1, who after robbing the passengers had got down and was injured by him. Thereafter, P.I. Mr.Subodhkumar had lodged complaint which was investigated by P.I. Mr.Pathak of Thasara Police Station. The appellant No.2, who had received bullet injuries, was removed to hospital for treatment. The investigating officer had recorded statements of passengers etc. and drawn panchnama of place of incident. During the course of investigation, used cartridges were recovered, whereas Tamanchas belonging to the appellants were seized. The seized articles were sent to Laboratory for the opinion of ballistic expert. The other articles were sent to Forensic Science Laboratory for analysis. After obtaining necessary ballistic report and report of analysis, and on conclusion of investigation, the appellants were chargesheeted in the Court of learned J.M.F.C.Thasara of the offences punishable under Section 392 read with section 114 & section 307 of the Indian Penal Code as well as Section 25(1C) of the Arms Act. As the offences punishable under Sections 392 & 307 I.P.C. are exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Kheda for trial where it was numbered as Sessions Case No.29 of 1997. The case was made over to learned Additional Sessions Judge, Camp:Anand for trial, who had framed charge against the appellants at Exh.5 of the offences punishable under Section 392 r.w.Sec.114 and Sec.307 of the Indian Penal Code and Section 25(1C) of the Arms Act, 1959.

3. The charge was read over and explained to the appellants who had pleaded not guilty to the same and claimed to be tried. The prosecution had, therefore, examined (1) Dr.Thakarsibhai Karasansinh Vaghela, PW.1 at Exh.11, who had treated appellant No.2 for injury sustained by him, (2) Lalbhai Nanubhai Qureshi, who was driver of the semi-luxury bus and who was robbed of his

wrist watch, money etc. as PW.2 at Exh.17, (3) Kanubhai Shanabhai Parmar, who was conductor of the bus, as PW.3 at Exh.20, (4) Ravjibhai Udesinh Parmar, who was serving in Home-Guard Unit, Dakor and was robbed of Rs.1520/-, as PW.4 at Exh.23, (5) Umeshbhai Vishnuprasad Joshi, who was manager in Laser Stall and was travelling in the bus, as PW.5 at Exh.25, (6) Ravindrakumar Jivabhai Patel, who was serving in Jai Chemicals, Ahmedabad and was travelling in the bus, as PW.6 at Exh.26, (7) Arjanbhai Jhalabhai Patil, who was a teacher and was robbed of Rs.1050, as PW.7 at Exh.30, (8) Anantrai Shantilal Shah, who was serving in Power House Credit Society and was robbed of Rs.70/-, as PW.8 at Exh.31, (9) Lalgarbhai Kanajibhai Pargi, who was robbed of Rs.1040/-, as PW.9 at Exh.32, (10) Vinubhai Bhikhabhai Patel, who was travelling in the bus, as PW.10 at Exh.34, (11) Manharlal Devarchand Pavar, who was one of the passengers of the bus, as PW.11 at Exh.35, (12) Jayantibhai Babarbhai, in whose presence panchnama of place of incident was drawn, as PW.12 at Exh.41, (13) Vinodbhai Naranbhai Nayak, in whose presence appellant No.2 was arrested, as PW.13 at Exh.48, (14) Gautamkumar Jayantibhai, in whose presence Tamanch from the possession of appellant No.1 was seized, as PW.14 at Exh.52, (15) Amarsinh Bhaijibhai Luhar as PW.15 at Exh.57, (16) Bharatbhai Shanabhai, in whose presence used cartridges were recovered and seized, as PW.16 at Exh.58, (17) Subhashbhai Karshanbhai as PW.17 at Exh.61, (18) Bhikhubhai Asarafbhai in whose presence panchnama of recovery of watches looted by the appellants was drawn, as PW.18 at Exh.62, (19) Ballistic Expert Jayprakash Jivanlal Barot as PW.19 at Exh.71, (20) Punambhai Chaturbhai Jhala as PW.20 at Exh.75, (21) Complainant Subodhkumar Satyendrakumar, who was P.I. in Railway Protection Force and was robbed of his wrist watch as PW.21 at Exh.76, (22) Melabhai Mohanbhai, who proved the contents of panchnama relating to recovery of watches produced at Exh.63, as PW.22 at Exh.85, (23) Kantibhai Mafatbhai Parmar as PW.23 at Exh.91, (24) Chandubhai Manilal Patel as PW.24 at Exh.97, and (25) Chimanbhai Motibhai Patel as PW.25 at Exh.99, to prove its case against the appellants.

It may be stated that during the pendency of trial, investigating officer Mr.Pathak had expired, which is quite evident from the contents of Exh.101 and, therefore, investigating officer could not be examined as one of the prosecution witnesses.

4. The prosecution had also produced documentary evidence such as certificate of injury sustained by appellant No.2 at Exh.13, panchnama of place of incident

at Exh.42, arrest panchnama of appellant No.2 at Exh.49, panchnama of seizure of Tamancha from appellant No.1 at Exh.56, panchnama relating to recovery of clothes of appellant No.2 at Exh.59, panchnama indicating seizure/recovery of used cartridges at Exh.60, panchnama relating to recovery of watches robbed at Exh.63, panchnama of identification of his watch by complainant Mr.Subodhkumar at Exh.64, complaint of Subodhkumar at Exh.77, report of ballistic expert at Exh.83, report of F.S.L. at Exh.100 etc. in support of its case against the appellants.

5. After recording of evidence of the prosecution witnesses was over, the learned Judge had explained to the appellants circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. In answer to the question that what he had to say to the evidence which indicated that he had got down from the bus and was threatening the passengers through windows of the bus and that Police Inspector had closed the door of the bus and fired shots at him, the appellant No.2 admitted that he had received bullet injury, but subsequently he changed the story and stated that he was falsely involved in the case and had received injury when he was working in a field situated near the road. However, no witness was examined by any of the appellants to substantiate the defence pleaded in their further statements.

6. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond doubt that on October 13, 1996, the appellants were travelling in semi-luxury bus bearing registration No.GJ-18-V-990 with lethal weapons and had scared the passengers and driver of the bus after putting them in fear of injury. According to the learned Judge, it was proved by the prosecution beyond pale of doubt that the appellants had abetted each other and robbed the passengers, complainant and driver totally of Rs.14,621/as well as other valuable articles after placing them in fear of death. It was concluded by the learned Judge that the appellant No.1, while he was in bus, had fired a shot from tamancha when the bus was in motion and could have caused death of any passenger. It was deduced by the learned Judge that the prosecution had proved beyond reasonable doubt that the appellant No.2 after getting down from the bus had aimed Tamancha at the complainant, driver and passengers and fired at them when the door was closed and bus driver had started the bus. What was noticed by the learned Judge was that the

accused had no licence enabling them to possess Tamancha. In view of abovereferredto conclusions, the learned Judge has convicted the appellants of the offences punishable under Section 392 read with section 114 and Section 307 I.P.C. as well as Section 25(1C) of the Arms Act, 1959 and imposed sentences referred to earlier, by judgment dated April 29, 1999, giving rise to instant appeal.

7. Mr.D.M.Shah, learned counsel of the appellants, contended that the appellants were wrongly roped in, as it was not possible by the investigating officer to trace the real culprits and, therefore, the impugned judgment should be set aside. According to the learned counsel of the appellants, evidence of prosecution witnesses is full of inconsistencies as well as contradictions and, therefore, the same should not have been relied on by the learned Judge of the trial Court for convicting the appellants of the offences punishable under Sections 392 r.w.sec.114 and 307 of the Indian Penal Code. What was maintained was that the identity of the appellants as perpetrators of crime was highly doubtful and, therefore, benefit of reasonable doubt, to which the appellants are entitled to, should have been given to them by the learned Judge of the trial Court. After taking the Court through the evidence on record, it was pleaded by the learned counsel of the appellants that the story narrated by the prosecution witnesses is not only unnatural, but sounds highly improbable and, therefore, the appeal should be accepted. The learned counsel emphasised that the evidence on record has not been appreciated in its proper perspective by the learned Judge of the trial Court and, therefore, the appeal should be allowed.

8. Mr.K.T.Dave, learned Additional Public Prosecutor, contended that the evidence consists of those who were victims of the robbery committed by the appellants and, therefore, natural evidence tendered by the victims is rightly believed by the learned Judge of the trial Court. According to the learned counsel, lights in the bus were on when robbery was being committed by the appellants and, therefore, it is not correct to contend that identification of the appellants was in doubt. According to the learned counsel of the State Government, appellant No.1 was apprehended by passengers in the bus, whereas appellant No.2 was found lying in injured condition at the place of incident and, therefore, false implication of the appellants stands totally ruled out. What was maintained was that the injury sustained by the appellant No.2 establishes that he was the person who had robbed the passengers and others of their valuables in the company of appellant

no.1 and having regard to the unassailable nature of evidence, the appeal should be dismissed.

9. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. The whole prosecution story stands unfolded through the evidence of Subodhkumar, who was then P.I. in Railway Protection Force and who was travelling in the bus. According to him, the bus was overcrowded and, therefore, he had occupied the seat meant for conductor of the bus. He has further stated that when the bus had reached near the field of Bhikhumiya Ibrahimmiya Shaikh of village Angadi on Thasara - Sevalia road, two persons had got up from the rear portion of the bus and asked passengers not to move and take out whatever they had. His evidence shows that one of the persons had come near him and pointed Tamancha at him and given bag to another person. This witness has stated that thereafter one, who had pointed Tamancha at him, had asked the passengers to place their valuables in the bag which was in the hands of another accused. His evidence would indicate that he himself was made to remove his own wrist watch and place it in the bag and that other passengers were also made to place their valuables in the bag. What is maintained by the witness is that on seeing the articles placed in the bag, the person who was standing near him was not satisfied and had uttered that his goal was to collect Rs.5 Lac and, therefore, asked the passengers to give everything they had and threatened that failure to do so would result in personal search of each passenger. According to Mr.Subodhkumar, so saying, the person standing near him had alighted from the bus, whereas another person who was in the bus had started moving from seat to seat along with bag. The witness has stated that he had got up and closed the door of the bus from inside and after loading his service revolver had fired shots at the person who was standing near the bus and also asked the driver to drive the bus immediately. What is stated by the witness is that he had asked the passengers not to be panicky and to apprehend the person who was collecting articles from them, as a result of which, the person, who was collecting articles from passengers, was overpowered by them and apprehended. The witness has further stated that thereafter the bus was driven towards Dakor Police Station and on way a mobile-police-van was spotted and after stopping the said police-van, police personnel sitting therein were informed about the incident. According to Mr.Subodhkumar, he was informed by the police personnel travelling in police-van that the

incident had taken place within the jurisdiction of Thasara Police Station and that they should approach Thasara Police Station and accordingly, the bus was taken to Thasara Police Station. It is also stated by this witness that police personnel from Thasara Police Station had gone to the place of incident where-from appellant No.2 was found lying in an injured condition and brought to the police station. What is maintained by this witness is that after another accused was brought to the police station, he had identified him as the person who had robbed the passengers with the aid of one who was apprehended from the bus and who was injured when the shot was fired from his service revolver. The witness had identified his wrist watch which was robbed. The witness has also narrated as to how the complaint was lodged by him. In his cross-examination, he has stated that he was able to understand Gujarati language, but was not able to read and write. According to him, his complaint was reduced into writing by police-writer and he had signed the same after it was read over to him. The witness has further stated in his cross-examination that as the bus was overcrowded, some of the passengers were standing. He admitted in his cross-examination that he himself had not apprehended the appellant No.1, but maintained that passengers had apprehended the appellant No.1 at his instance. The witness admitted that no passengers travelling in the bus was injured and that he himself had not seen as to who had fired shot in the bus. According to this witness, he was not knowing as to which officer was travelling in mobile-police-van and that no panchnama was prepared at the time when the appellant No.1 was handed over to police personnel travelling in police-van. He has also admitted that he was not knowing the name of appellant No.1 before occurrence of the incident and that no identification parade was held by the investigating officer. It was emphatically denied by him that the appellant No.1 was falsely implicated in the case. In cross-examination by the learned counsel of the appellant No.2, it was stated by this witness that he had fired shots outside the bus and that if there had not been light in the bus, it would have been difficult for him to identify appellant No.2. It was also admitted by him that no identification parade was held by investigating officer for identification of the appellant No.2 nor he himself had suggested the investigating officer to hold such a parade. According to this witness, the police officer had demanded his revolver which he had handed over to him and that after examining the same, police officer had returned the same to him. During the cross-examination, he had maintained that he had purchased ticket for travelling in the bus, but he

had not preserved the same. The suggestion made by the learned counsel of the appellant No.2 that the appellant No.2 had not asked the appellant No.1, who was in the bus, to fire shots and kill passengers, was emphatically denied by this witness. A fair reading of evidence of this witness would indicate that he has deposed before the Court in a most natural manner. His evidence does not indicate that he had grudge against any of the appellants. It is relevant to notice that this witness stands corroborated by the medical evidence regarding his assertion that the appellant No.2 had sustained injuries when he had fired shots at him from his service revolver. The witness gets corroboration not only from his own complaint which was lodged promptly and without loss of any time, but also from other witnesses, who were his co.passengers in the bus. Though some minor omissions have been brought on record, this Court is of the opinion that those omissions are inconsequential and cannot be regarded as material contradictions. The learned Judge of the trial Court, who had advantage of observing demeanour of witness, has rightly placed reliance on the evidence of this witness, who is a government servant and who has no grudge against any of the appellants.

10. Further, the case against the appellants stands ambly proved by the evidence of Lalbhai Nathubhai Qureshi, who was driver of the bus as well as Kanubhai Shanabhai Parmar, who was conductor of the bus. Lalbhai Qureshi has, in detail, narrated before the Court as to how appellant No.1 had threatened him with Tamancha to take the bus to the side of the road and stop it. This witness has maintained in detail as to how he was robbed of his valuables. His evidence shows that on the bonnet of the bus the conductor was sitting, whereas in the seat of the conductor, P.I. Mr.Subodhkumar was sitting. According to this witness, a person, who had Tamancha with him, had kept the Tamancha on chest of Police Inspector and asked passengers to give their belongings to another person who was moving amongst the passengers with a bag. The witness has stated that Police Inspector was made to place his wrist watch in the bag and he himself had also placed his wrist watch and Rs.70/- in the bag. The witness has further mentioned before the Court that at the time when the robbery was taking place, lights in the bus were on and, therefore, he was able to identify both the appellants. This witness has also stated that the person, who was standing near P.S.I., had seen belongings of the passengers collected by another person in the bag and told that his goal was to collect Rs.5 Lac and had threatened the passengers to give all their belongings and had got down from the bus.

According to this witness, P.S.I. had immediately closed the door and fired shots at the person who had alighted from the bus and asked the driver to start the bus immediately. The witness has asserted that the person, who was moving with bag, had fired a shot, but he was overpowered by the passengers and arrested, after which the bus was taken to Dakor Police Station and then to Thasara Police Station within whose jurisdiction the offence had taken place. The witness has mentioned that the police had arrested the person who had collected valuables belonging to the passengers in a bag and also recovered Tamancha from him and also arrested another person from the place of incident, who was lying there in an injured condition. The witness has identified the valuables belonging to him which were robbed as well as the appellants. Suffice it to say that the evidence of this witness completely corroborates the sworn testimony of complainant Subodhkumar and, therefore, it is not necessary to refer to the same in detail. In cross-examination, the witness has stated that he was not expected to stop the bus except at Maninagar and Dakor, which were scheduled stops. The witness has admitted that he had not stated in his police statement that the appellant No.1 had aimed Tamancha at his head nor had he stated that P.S.I. of Railway Protection Force had occupied the seat meant for conductor. According to him, at the time of incident, passengers had become panicky, as a result of which commotion had taken place, but, it was maintained by him that the appellant No.1 was apprehended in the bus itself. He has denied the suggestion made by the learned counsel of the appellant No.1 that the appellant No.1 was falsely implicated in the case. During the course of cross-examination by the appellant No.2 it was stated by this witness that there were about 60 passengers in the bus, who were travelling from Godhra, but it was emphatically denied by him that lights in the bus were not on and that he was not able to identify the appellants. The cross-examination of the witness would indicate that he was the person who had shown the place of occurrence to the investigating officer. The witness has denied the suggestion made by the learned counsel of appellants that he had learnt the names of the appellants after lodging of complaint by Subodhkumar. The evidence of this witness would also indicate that he is a government servant and has no reason to falsely implicate the appellants in such a serious case. The witness himself was threatened and robbed by appellant No.1. Therefore, he would hardly commit any mistake in identifying the appellant No.1. The appellant No.2 had also been properly identified by him. During the lengthy cross-examination of this

witness, nothing could be brought on record which could shake his version about the manner in which the incident had taken place and the role played by the appellants in the incident. Thus, the prosecution case also stands proved by the reliable and cogent evidence of driver of the bus.

Again, Kanubhai Shanabhai Parmar, PW.3 Exh.20, who was conductor of the bus, has also proved the case of the prosecution against the appellants beyond reasonable doubt. In his examination-in-chief, he has narrated the whole incident in the same manner as was narrated by complainant Subodhbhai and driver of the bus Lalbhai Qureshi. Therefore, this Court does not find it necessary to reproduce relevant part of examination-in-chief of this witness. Suffice it to note that the witness has completely corroborated the evidence of complainant Subodhkumar and evidence of driver Lalbhai Qureshi. However, cross-examination of this witness would indicate that lights in the bus were on and were not switched off after booking was completed by him. It was admitted by him that he had not stated in his police statement that appellant No.1 had threatened him with life if money with him was not placed in the bag. However, the witness has emphatically maintained in cross-examination also that the appellants had robbed passengers. In cross-examination by the learned counsel of the appellant No.2, it was stated by the witness that though identification parade was not held, he had identified the appellant No.2 as the same person who had robbed the passengers and fired on the tyre of the bus when driver had driven the bus at the instance of complainant Subodhkumar. A fair reading of the evidence of this witness would indicate that there are no major contradictions appearing in his evidence. The witness has unfolded the incident in most natural manner. The witness has not exaggerated the incident. It could not be suggested by the appellants to the witness that he had any enmity with them. Under the circumstances, this Court is of the opinion that the learned Judge of the trial Court did not commit error in relying upon the evidence of this witness while convicting the appellants.

11. So also, the evidence of Ravjibhai Udesinh Parmar, PW.4 Exh.23, Umeshbhai Vishnuprasad Joshi, PW.5 Exh.25, Ravindrakumar Jivabhai Patel, PW.6 Exh.26, Arjanbhai Jhalabhai Patil, PW.7 Exh.30, Anantrai S.Shah PW.8 Exh.31, Lalgarbhai Kanjibhai Pargi, PW.9 Exh.32 and Manharlal Devarchand Pavar, PW.11 Exh.35, would indicate that they were travelling in the semi-luxury-bus as genuine passengers and were victims of robbery committed

by the appellants. They have also narrated the whole incident as is narrated by complainant Subodhkumar and Lalbhai Qureshi who was driver of the bus and, therefore, it is not necessary to refer to their examinations-in-chief and burden this judgment unnecessarily. This Court has minutely gone through the cross-examinations of abovenamed witnesses. During the cross-examination of this witness, nothing important could be elicited so as to doubt their version of incident as given in examination-in-chief. So far as cross-examination of witness Ravjibhai is concerned, what could be elicited by the defence was that he was not knowing as to whose police statements were recorded after recording of his police statement was over. The witness has admitted that his bushirt was attached during the course of investigation and that the passengers had beaten the person who was overpowered in the bus itself, as a result of which the said person had sustained injury on head. In his cross-examination also, the witness has asserted that he had heard shots being fired at the bus. Again, the cross-examination of witness Umeshbhai Joshi, PW.5, would indicate that about 65 to 70 passengers were travelling in the bus and his police statement was recorded at about 12.00 midnight. This witness has accepted the suggestion made by the defence that one of the accused had pointed revolver on the temple of the driver and that bus had stopped for about 30 to 35 minutes at the place of incident. The witness has denied the suggestion made by the defence that he had learnt about the incident from the talks of passengers and asserted that he was witness to the robbery committed by the appellants. Again, witness Ravindrakumar Patel, PW.6, has stated in his cross-examination that he had not given description of the appellants in his police statement. This witness admitted in his cross-examination that he was not knowing that Inspector had fired from the bus at the person who was standing near the bus. However, this witness has emphatically denied the suggestion that there was no face to face encounter between the person who was standing near the bus and the Inspector. The witness has further admitted that the person, who was handed over to police, was bleeding from head, as he was beaten by the passengers. Witness Arjanbhai Patil, PW.7, in his cross-examination has stated that at the time of incident there was darkness on the road, but it was asserted by him that lights in the bus were on. Even during the cross-examination, the witness has stated that P.I. Mr.Subodhkumar had fired at the person who was standing outside the bus. The witness has admitted that in his police statement he had not stated that in second round

he was robbed of Rs.1000/-. Witness Anantrai S.Shah, PW.8, in his cross-examination has stated that he belongs to Saurashtra and that he had no occasion to meet the person who was apprehended from the bus and handed over to the police. It was also admitted by him that he had no occasion to meet P.I. Mr.Subodhkumar Sharma of Railway Protection Force. The witness has denied the suggestion of the defence that two persons, who had muffed their faces, had committed robbery and that the appellants were falsely implicated in the case. The witenss has also denied the suggestion made by the defence that none of the appellants had Tamancha with him. The witness has admitted that after the incident, he had occasion to identify the appellants for the first time in the Court-room, but denied the suggestion that he had not seen the incident because there was darkness in the bus. Witness Lalgarbhai Pargi in his cross-examination has admitted that he had not apprehended any of the appellants and that no identification parade was held, but it was asserted by him that P.S.I. had fired shots from the bus. According to this witness, the person who was apprehended from the bus had a Tamancha in his hand and that the said person was handed over to police and that he had learnt about the names of the appellants only when they were interrogated by the police. Witness Vinubhai Patel, PW.10, has not fully supported the case of prosecution and, therefor, was permitted to be cross-examined by the learned A.P.P. However, his evidence would indicate that one person was apprehended from the bus itself and another person, who had alighted from the bus and was standing near the bus, had fired shots at the bus. As this witness has not supported the prosecution case, it is not necessary to refer to his cross-examination in detail and even otherwise, nothing substantial is stated by this witness in his cross-examination. Witness Manharlal Pavar, PW.11, has fully supported the prosecution case and narrated the incident as is narrated by other witnesses. In his cross-examination, the witness has stated that there were about 58 to 60 passengers in the bus and that commotion had taken place at the time of robbery, as a result of which he had become panicky. The suggestion made by the defence that it was not possible for the passengers to see faces of each other, was denied by this witness. Another suggestion made by the defence that he was not travelling in the bus was also emphatically denied by the witness. During the course of cross-examination by the learned counsel of the appellant No.2, this witness has admitted that earlier he had not seen the appellants and that no identification parade of the appellants was held by

Mamlatdar. However, a fair reading of his evidence indicates that he was able to identify the appellants as persons who had committed robbery in the bus.

Having gone through the examinations-in-chief of the aforementioned witnesses and their cross-examinations by the learned counsel of the appellants, this Court finds that their evidence does not suffer from major contradictions. A passenger travelling in a bus would certainly be able to identify the robbers when robbery takes place in a bus which is in motion. The evidence on record would indicate that lights in the bus were on and, therefore, claim of of all these witnesses that they had identified the appellants as perpetrators of crime, deserves to be accepted. All these persons were genuine passengers in the bus and had nothing to do with each other and for that matter, with the appellants. There is no earthly reason for any of them to falsely implicate the appellants in such a serious case. It is relevant to notice that all of them had correctly identified the appellants. As observed earlier, appellant No.1 was apprehended from the bus itself, whereas appellant No.2 was found lying in an injured condition because he had sustained injuries from the shots fired by complainant Mr.Subodhkumar from his service revolver and was apprehended from the place of incident itself. Thus, the claim advanced by these eye witnesses that the appellants had committed robbery and fired shots from their Tamanchas stands proved by their sworn testimonies also.

12. There is yet another feature of the case which deserves to be noticed. The circumstantial evidence in the form of report of ballistic expert would indicate that the used cartridges which were found from the place of incident were such which could have been fired from the Tamanchas of the appellants. This fact stands amply proved through the evidence of ballistic expert Shri Jayprakash Jivanlal Barot and report of ballistic expert produced at Exh.83. It may be stated that recovery of used cartridges and tamanchas stands amply proved by evidence of passengers and police officials. Further, appellant No.2 could not offer any explanation as to how he had sustained bullet injuries. As noticed earlier, in answer to one question he had admitted that he had received bullet injuries, but subsequently changed his version that he had received injury when he was working in the field. The appellant No.2 could not give any particulars as to in whose field he was working, nor could examine any witness in support of his say that he had sustained bullet injury accidently. Having regard to the specific case established by the complainant that he

had fired shots at the appellant no.2, who was standing near the bus and injured him, the bare assertion to the effect that he had received injury accidently which has no factual basis, cannot be accepted.

13. After having gone through the evidence in minute details, this Court is of the opinion that the learned counsel of the appellants has failed to probablise the defence of the appellants that they were falsely implicated in the case by the witnesses. Commission of offences punishable under section 392 r.w.sec.307 I.P.C. and Section 25(1C) of the Arms Act stands established by reliable, consistent, natural and cogent evidence of complainant, driver and conductor of bus and other passengers. No exception can be taken to the cogent and convincing reasons assigned by the learned Judge for convicting the appellants of the offences punishable under Section 392 r.w.sec.114 and section 307 I.P.C. The net result of the above discussion is that this Court does not find any substance in the appeal and the same is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

(J.M.Panchal,J.)

(M.R.Shah, J.)

(patel)